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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,091	06/25/2003	Mike Kamm	31399.22890	2525

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EXAMINER
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BLAKE, CAROLYN T

ART UNIT	PAPER NUMBER
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3724

DATE MAILED: 11/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

10/606,091

### Applicant(s)

KAMM, MIKE ET AL

### Examiner

Carolyn T Blake

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: opening (303) and resiliently deformable ridge (306).
2. The drawings are objected to because FIG 2 appears to be a duplicate of FIG 1, with the exception that FIG 1 has additional reference characters.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claim 5 is objected to because it states "the food storage section is selectively connected to the food storage section," while it should likely read - -the food holding section is selectively connected to the food storage section- -." Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Verdaguer (5,305,928).

Regarding claim 1, Verdaguer discloses a hand-held eating utensil (FIGS 1-8) comprising a food holding section (22) and a food storage section (12). The associated food is substantially completely enclosed within the eating utensil (see FIGS).

Regarding claim 2, Verdaguer discloses the food holding section is a spoon (26).

Regarding claim 3, Verdaguer discloses the utensil further comprises a food passage valve (29 and 30) adapted to selectively operatively communicate associated food from the food storage section to the food holding section (lines 6-12 of the Abstract and FIG 1).

Regarding claim 4, the food storage section (12) disclosed by Verdaguer is selectively refillable with associated food (inherent).

Regarding claim 5, the food holding section (22) is selectively connected to the food storage section (12). The food holding section (22) is connected to the food storage section (12) by the connection of the threads (18) to the plate (30).

Regarding claim 6, the food storage section (12) is made from a resiliently deformable material (col.2, line 2 and col.2, line 13).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Verdaguer in view of Lampard (5,154,318). Verdaguer teaches the use of a resiliently deformable material for the food storage section (12), but fails to teach the use of plastic as a specific material choice. Lampard discloses a hand-held eating utensil comprising a food holding section (35) and a food storage section (12), wherein the food storage section (12) is made from resiliently deformable plastic (col. 4, lines 8-10). See also FIG 5. Plastic is a resiliently deformable material that is advantageous to use because it is inexpensive and easy to manufacture. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use plastic, as disclosed by Lampard, for the resiliently deformable material of the food storage section of the Verdaguer device because plastic is inexpensive and easy to manufacture.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Verdaguer in view of Stewart (2002/0134801 A1). Verdauger discloses a valve, but fails to disclose a valve with slits. Stewart discloses a dispensing valve (10) with slits (22) used with a storage section (12). The valve opens and closes to dispense a material in response to a change in pressure (FIG 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the

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Verdaguer valve to include slits, as taught by Stewart, in order to dispense in response to the pressure change of squeezing the food storage section.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Castner et al (4,888,188), Cameron (6,279,233 B1), Lee (5,491,895), Bergkvist et al (4,880,409), Edmonds (2,252,119), Stein (D371,491), Mouchmouchian (5,462,101), and Bush (2,953,170) disclose hand-held eating utensils with food holding sections (spoon) and food storage sections. Gross (6,006,960) discloses a valve with slits.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn T Blake whose telephone number is (703) 305-0390. The examiner can normally be reached on Monday to Friday, 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N Shoap can be reached on (703) 308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CB

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October 28, 2004



Allan N. Shoap  
Supervisory Patent Examiner  
Group 3700